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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
METRO AUTHORITY

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Director

Determination No. 5 – Public Rights-of-Way Leased/Owned Fee Payments July 19, 2005

Purpose

Clarify the maintenance fee requirements of Section 8(5) of the METRO Act, which reads:

“The fee required under this section is based on the linear feet occupied by the provider regardless of the quantity or type of the provider’s facilities utilizing the public right-of-way or whether the facilities are leased to another provider.”

Some providers lease facilities from other providers and have raised the question of whether both providers are paying and/or are required to pay for the occupancy of the same linear footage in the public right-of-way.

Analysis

Based on the reports received from telecommunication providers, the METRO Authority is unable to determine whether maintenance fees for telecommunication facilities in public rights-of-way are being paid for by the facilities’ owners or lessees. The basic issue is whether payment is based on individual occupancy of the public right-of-way. The METRO Authority interprets Section 8(5) of the METRO Act as follows:

- If a provider qualifies as a “telecommunication provider” under Section 2(k) of the METRO Act, the fee requirement of Section 8(5) of the Act is applicable, regardless of whether the provider owns or leases the facilities in the public right-of-way.
- Telecommunication providers, as defined by Section 2(k) of the METRO Act, whose facilities occupy a public right-of-way must pay a maintenance fee based on their individually reported linear footage occupied, regardless of whether their facilities are leased or owned.
- Educational institutions, privately owned utilities/affiliates, and publicly owned utilities are not required to obtain permits, pay fees, or fulfill mapping requirements of the METRO Act for telecommunication facilities located in the public rights-of-way used solely for their respective internal services. If these providers provide or lease their telecommunication services to other external entities for compensation, permits must be obtained; maintenance fees must be paid; and mapping requirements must be fulfilled pursuant to Sections 8(18), 8(19), & 8(20) of the Act.

METRO Authority Determination

Section 8(5) stipulates that the maintenance fee charged a provider is based on the linear feet of facilities in the public rights-of-way occupied by the provider regardless of whether leased or

owned. Therefore, the maintenance fee is charged to each individual provider for their individual use of the public right-of-way, regardless of other providers that may be occupying the same facilities.

A decision or assessment of the Authority is subject to a de novo review by the Michigan Public Service Commission upon the request of an interested person pursuant to Section 17 of the METRO Act.